

REMARKS

STATUS OF THE CLAIMS

The claims have been amended herein to simplify the claim structure for examination in view of the elected subject matter and comments below and to correct errors. The amendments do not narrow the scope of the claimed elected subject matter. Applicants reserve the right to prosecute non-elected subject matter in one or more continuing application(s).

RESPONSE TO RESTRICTION REQUIREMENT

In response to the restriction requirement which the Examiner imposed, Applicants elect, with traverse, to prosecute claims 1-4, *i.e.*, the Group I claims. Applicants further elect, with traverse, (a) lipoic acid.

Applicants traverse with respect to the restriction between Groups I and III on the basis that the Group I claims generically link the Group III claims. Specifically, each of claims 12-15 of Group III currently depends from claim 1 and therefore incorporates the limitations of Group I. Claim 1 is thus a generic linking claim and each of claims 12-15 must be examined together with the elected invention accordingly. Specifically, in a restriction requirement, generic or other linking claims must be examined with the linked inventions and the presence of the linking claim should be clearly noted on the record. See MPEP §814.

In regard to the foregoing Applicants respectfully draw attention to the decision by the Court of Appeals for the Federal Circuit in *In re Michael P. Doyle*, which noted that an applicant may prosecute generic, linking claims “without running afoul of the restriction requirement *because they are linking claims.*” 293 F.3d 1355, 1360 (Fed. Cir., 2002), *citing* MPEP §809.03 (8th ed. 2001) (emphasis added). Indeed, the Court held that the failure to present generic claims

in the original prosecution of an application was an error correctable by broadening reissue. *Id.* at 1361-1362. Further, the Federal Circuit noted that allowance of a linking claim prompts the examination of covered claims, stating that “[t]he MPEP expressly provides that ‘[I]f a linking claim is allowed, the examiner must thereafter examine species if the linking claim is generic thereto, or he or she must examine the claims to the nonelected inventions that are linked to the elected invention by such allowed linking claim.’” *Id.* at 1362., *citing* MPEP § 809.04 (emphasis added by the Court). Consideration of all of the Group I and Group III claims is thus respectfully requested.

Applicants further traverse with respect to the restriction between (a) lipoic acid and (b) an analogue thereof as these groups are sufficiently related that they must be examined together as presenting no serious burden on the Examiner. For example, the on-line version of the Merriam-Webster™ dictionary provides the relevant definition of “analog” as being “1 : of, relating to, or being an analogue.” **Exhibit A.** The relevant definition of “analogue” is given as “a chemical compound that is structurally similar to another but differs slightly in composition (as in the replacement of one atom by an atom of a different element or in the presence of a particular functional group).” **Exhibit B.** In addition, the current claims recite an effective amount the lipoic acid or analog thereof according to the claimed methods. The lipoic acid and analog thereof are therefore, although patentably distinct, functionally and structurally related such that there would be no serious burden in examining both. The M.P.E.P. requires that “[i]f the search and examination of an entire application can be made without serious burden, the examiner *must* examine it on the merits, even though it includes claims to independent or distinct inventions.” (emphasis added) M.P.E.P. §803. Here, a search and examination of claim 1,

including use of lipoic acid or an analog thereof, would cause no additional burden due to the aforementioned common utility and structural relation.

In view of the foregoing, examination of all of the Group I and III claims is respectfully requested.

The Examiner is invited to contact the undersigned attorney at (512) 536-3085 with any questions, comments or suggestions relating to the referenced patent application.

Respectfully submitted,



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EXHIBIT A



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Main Entry: **an·a·log**

Pronunciation: 'a-n&- "log, - "läg

Function: *adjective*

1 : of, relating to, or being an analogue

2 a : of, relating to, or being a mechanism in which data is represented by continuously variable physical quantities **b** : of or relating to an analog computer **c** : being a timepiece having hour and minute hands

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Main Entry: **¹an·a·logue** Variant(s): or **an·a·log** /'a-n&-"log, -"läg/Function: *noun*

Etymology: French *analogue*, from *analogue* analogous,
from Greek *analogos*

1 : something that is analogous or similar to something else

2 : an organ or part similar in function to an organ or part of
another animal or plant but different in structure and origin

3 *usually analogue* : a chemical compound that is structurally
similar to another but differs slightly in composition (as in
the replacement of one atom by an atom of a different
element or in the presence of a particular functional group)

4 : a food product made by combining a less expensive food
(as soybeans or whitefish) with additives to give the
appearance and taste of a more expensive food (as beef or
crab)

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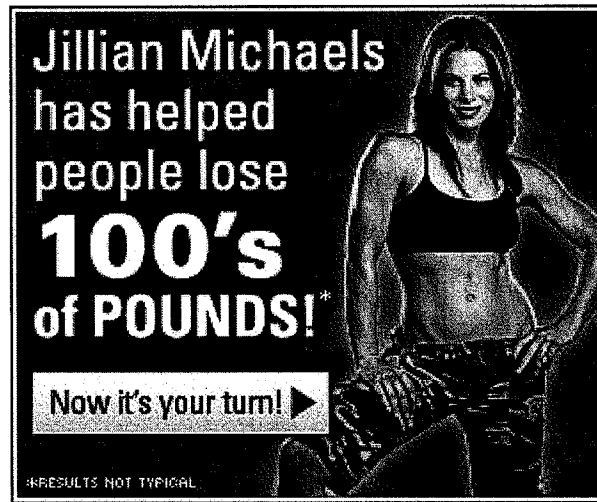


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